LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV 1 1962
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 423

JOHN D. GLYNN,

Appellant,

vs.

MARJORIE DOCTORMAN DUBIN, aka MARJORIE DOCTORMAN and DESERET FEDERAL SAVINGS AND LOAN ASSOCIATION,

Respondents.

Brief for all above named Respondents in opposition to Petition for a Writ of Certiorari to the District Court of the Third Judicial District in and for Salt Lake County, State of Utah.

JOHN D. GLYNN
Beverly Hills, California,
9171 Wilshire Boulevard,
Appearing in Pro. Se.

ARTHUR H. NIELSEN and
DEAN CONDER
Newhouse Building
Salt Lake City, Utah

BERNARD L. ROSE
53 East Fourth South
Salt Lake City, Utah

Appearing for the Respondents

INDEX

	Page
Opinions Below	1
Jurisdiction	1
Questions Presented	2
Statement	2
Argument	5
Conclusion	8

Cases Cited

Bottone vs. Lindsley, 170 Fed. (2d) 705; 69 S. Ct. 810; 336 U.S. 944; 93 L. Ed. 1101 7

Forbes vs. Virginia State Council, 30 S. Ct. 205; 216 U.S. 396; 54 L. Ed. 534 6

St. Louis & San Francisco Railroad Co. vs. H. B. Shepherd, 136 S. Ct. 274; 240 U.S. 240; 60 L. Ed. 622 5

United States Bell Telephone Co. of Penn. vs. Penn. Public Utilities Comm., 60 S. Ct. 411; 309 U.S. 30; 80 L. Ed. 563 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1962

No. 423

JOHN D. GLYNN,

Appellant,

vs.

MARJORIE DOCTORMAN DUBIN, aka MARJORIE DOCTORMAN and DESERET FEDERAL SAVINGS AND LOAN ASSOCIATION,

Respondents.

Brief for all above named Respondents in opposition to Petition for a Writ of Certiorari to the District Court of the Third Judicial District in and for Salt Lake County, State of Utah.

Opinions Below

The opinion of the Supreme Court of Utah is reported at 13 Utah (2) 163 and 369 Pac. (2) 930. A copy of such opinion is attached to petitioner's petition as Appendix A.

Jurisdiction

The judgment of the Supreme Court of Utah was entered on March 27, 1962. A petition for rehearing filed by petitioners was denied May 14, whereupon judgment became final.

Questions Presented

I. Did Petitioner properly and timely raise the issue of violation of due process?

II. Was Petitioner's right to due process as enunciated in the Fourteenth Amendment to the Constitution of the United States violated by failure of service of process upon him in the *Dubin vs. Dubin* divorce action?

III. Does Petitioner's assertion that the Third Judicial District Court of the State of Utah and the Utah Supreme Court erred by misconstruing and misapplying the Utah Fraudulent Conveyance Statutes (25-1-7, 8, 16, 18, U.C.A. 1953) raise constitutional or factual questions reviewable by this Court?

Statement

Lot 24, East Millbrook No. 2, located in Salt Lake County, State of Utah, was acquired by Marjorie Doctorman (then Dubin), hereinafter called the Defendant and Dr. Martin F. Dubin, in joint tenancy on July 22, 1957. The down payment, in excess of $10,500, was made out of funds accumulated by Defendant prior to marriage to Dubin.

Defendant Marjorie Doctorman Dubin sued Dr. Martin F. Dubin in separate maintenance in Case No. 119467 in the District Court of Salt Lake County in December, 1958, and recorded a lis pendens setting forth that Marjorie Doctorman Dubin prayed for the property in dispute under claim of right. More than three months after the said filing, namely on the 18th day of March, 1959, an amended complaint in divorce on the grounds of

cruelty was filed setting forth Marjorie Doctorman Dubin's principal outlay in the said property, her right to it, and requesting the Court to award her all of Dr. Martin F. Dubin's right, title and interest in and to the same, the said property, being meticulously and particularly described.

Petitioner Glynn was retained as counsel for Dr. Martin F. Dubin in that action, entered his appearance as such, and answered the amended complaint. He also filed a cross complaint for a divorce on behalf of his Client.

A quit-claim deed, dated December 7, 1959, was recorded the same day in the office of the County Recorder in Salt Lake County, with Dr. Martin F. Dubin as grantor and John D. Glynn as Grantee. Subsequently in the trial of the instant matter, a promissory note dated December 7, 1959 was presented as evidence of partial consideration therefor. Payments on the note were to begin January 7, 1960.

Shortly after 2 p.m. on December 8, 1959, the Honorable A. H. Ellett, on his own motion, dismissed Case No. 119467, without prejudice to the rights of the parties and granted leave to proceed in another action. The Court's reason for such dismissal was that it lacked jurisdiction because the amended complaint, seeking a decree of divorce, related back to the date of original filing of the separate maintenance action, at which time neither party had been a bona fide and actual resident of the State of Utah for 3 months.

Prior, however, to such dismissal, Marjorie Doctorman Dubin filed a new action for divorce against Dr. Martin F. Dubin (Case No. 123578), and caused to be issued by the Court an Order to Show Cause at 1:10 p.m. December 8, 1959, against said Defendant Dubin. The Pleading filed by Mrs. Dubin (Defendant herein) specifically described the property here involved, claimed her right thereto and prayed for distribution to her of any claimed interest therein by Dr. Martin F. Dubin. Lis pendens was recorded at 1:45 p.m.

Plaintiff herein, John D. Glynn, admitted he knew prior to the execution and delivery to him of the deed dated December 7, 1959, that the down payment for this property was made by Marjorie Doctorman Dubin from her separate estate acquired prior to marriage to Dr. Martin F. Dubin. He admitted he knew that payments were made on the property from the separate funds of Marjorie Doctorman Dubin: he admitted he knew that causes No. 119467 and 123578 were filed praying all interest in the subject property be decreed to her.

All this Glynn admitted in the trial of the instant cause. He knew prior to the execution and delivery of the deeds to him.

A quit-claim deed dated December 8, 1959, with Dr. Martin F. Dubin as grantor and John D. Glynn as Grantee, conveying the subject property was recorded in Salt Lake County, at 4:40 p.m. the same day. It states for information purposes that a promissory note in the sum of $5,000 payable in $100 monthly installments was delivered by the grantee to the grantor. Another document was recorded purporting to be for informational

purposes setting forth the said note. The second deed was made because Glynn "wasn't sure of the legality of the first document." The deed and note dated December 8, 1959, were executed and delivered on the morning of December 8, 1959, which was prior to the dismissal without prejudice of Case No. 119467.

A decree was made and entered in Case No. 123578 on January 20, 1960, as follows: "Plaintiff be, and she hereby is, awarded as her sole and separate property, free and clear of any claims of the Defendant, the following described property located in Salt Lake County, State of Utah, to-wit: Lot 24, East Millbrook No. 2, according to the official plats of Salt Lake County."

ARGUMENT

I. Petitioner neither properly nor timely raised the issue of violation of due process.

Petitioner herein raised or attempted to raise a Federal question for the first time in his petition for Rehearing in the Supreme Court of Utah after his appeal from the judgment of the Trial Court had been denied and its decision affirmed. The Utah Supreme Court denied a petition for rehearing summarily without passing on the questions raised therein.

The course of the instant matter through the Courts is parallel to that of *St. Louis and San Francisco Railroad Company vs. H. B. Shepherd*, 136 S. Ct. 274; 240 U.S. 240; 60 L. Ed. 622.

The headnote thereto declares: "A Federal question first set up and asserted in a petition for rehearing after judgment in the Trial Court had been affirmed by the

highest court of the state, will not support the jurisdiction of the Federal Supreme Court on writ of error, where the petition was not entertained, but was denied without passing on the Federal question thus tardily raised."

To the same effect is: *Forbes vs. Virginia State Council* 30 S. Ct. 205; 216 U.S. 396; 54 L. Ed. 534.

II. Petitioner's constitutional rights as set forth in the Fourteenth Amendment to the Constitution of the United States were not violated by failure to make him a party to Dubin vs. Dubin divorce action or serve him with process:

Had petitioners' rights been precluded by the decree in the *Dubin vs Dubin* divorce, then there would not have been and could not have been a hearing on the issues, with testimony taken, in *Glynn vs. Marjorie Doctorman Dubin.* It would have been the right of defendant Dubin to have interposed the defense of res adjudicata. The *Dubin vs. Dubin* divorce action left open the matter of petitioners' rights. Had he, in his partition action, been able by direct testimony or other credible evidence to establish that he was an innocent purchaser in good faith, having no notice of the rights of Marjorie Doctorman Dubin in the subject property, and no notice of the fact that the same had been placed within the jurisdiction of a court, he might have prevailed in his partition action. However, petitioner as plaintiff in the instant matter readily and candidly admitted to knowledge of everything which defendant contended in the divorce complaint, but asserted his arbitrary and uni-

lateral right to take one-half of the property out of the jurisdiction of the Court by the summary procedure of conveyance to him. The Trial Court properly found that he was not a bona fide purchaser, having full and complete knowledge of Mrs. Dubin's alleged rights and rejected his contention of being able to deprive the Court of its power to act with respect to the property by taking conveyance under such circumstances.

The findings of the Trial Court were affirmed on appeal by the Supreme Court of the State of Utah.

III. There is no constitutional of federal question reviewable by this court. Petitioner attacks interpretation and application, but not constitutionality of state statutes.

The constitutional guaranty under the XIV Amendment is a matter of substance, not of form. However, it does not guarantee against judicial error, and it does not provide any guaranty against unjust or erroneous decisions. Nor does such claimed error present a federal question. See *United States Bell Telephone Company of Pennsylvania vs. Penn. Public Utilities Commission*, 60 S. Ct. 411, 309 U.S. 30, 84 L. Ed. 563; *Bottone vs. Lindsley* 170 F. 2d, 705, Cert. Den. 69 S. Ct. 810, 336 U.S. 944, 93 L. Ed. 1101.

Petitioner does not contest the constitutionality of the Utah Fraudulent Conveyance Statutes nor of our Lis Pendens Statutes. He contests only the interpreta-

tion given thereto and the application made thereof by the District Court of Salt Lake County, Utah, and the Supreme Court of Utah.

Conclusion

For the reasons herein set forth the petition for a writ of certiorari should be denied.

Respectfully Submitted

ARTHUR H. NIELSEN and
DEAN CONDER
Newhouse Building
Salt Lake City, Utah

BERNARD L. ROSE
53 East Fourth South
Salt Lake City, Utah